IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 789 OF 1992

Union of India ..Appellants

versus

M/s. Daguji Bhavrao ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. G. J. Mohanrao for the Respondents.

CORAM: D.G.DESHPANDE,J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 1.1.1992.

3. Mr. Samant raised only three contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 12% per annum and according to him it should be

9% per annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum.

4. Third contention of Mr. Samant is that the claim was filed by the original claimants against two Railways i.e. Central Railway and Southern Railways.

5. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

6. In this case consignment booked on 16.5.1975 delivered at destination on 29.5.1975. There was a delay of 6 days in transit. At the time of delivery, the damage was assessed. Contents of damage certificate regarding number of bags damaged and percentages of damages are not correct and are not admitted. According to the claimants the onions booked were of best quality, big, red and in sound condition. The wagon was

found tampered with. The loss, damage, deterioration, shortage and non delivery are due to negligence and misconduct of the Appellants and their servants. The original claimants have claimed compensation on the basis of expected sale proceeds and actual sale proceeds. Inspite of repeated requests the railways have not disclosed full particulars of transit of the suit consignment and as the claim was not settled Application came to be filed before the RACT Mumbai. The Tribunal framed as many as 17 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

7. As regards liability of both the railways, if at all there is liability of the Union of India, then Decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India, I

have accepted this contention, therefore, impugned judgment will have to be maintained against General Manager, Central Railway only and order against Southern Railways will have to be set aside.

8. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. There shall be liability of General Manager, Central Railway only and not of Southern Railways.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

4.5.2005 (D.G. DESHPANDE,J.)